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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,117	03/12/2004	Daniel P. Guyton	30011.24987	7081
78340	7590	01/06/2010	EXAMINER	
Emerson, Thomson & Bennett, LLC 777 W. Market Street Akron, OH 44303				EDELL, JOSEPH F
3636		ART UNIT		PAPER NUMBER
01/06/2010		NOTIFICATION DATE		DELIVERY MODE
				ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@etblaw.com  
dlm@etblaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/799,117	GUYTON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JOSEPH F. EDELL	3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 October 2009.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-10 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-10 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____.   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

In view of the appeal brief filed on 12 October 2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,742,957 to Vanzant in view of U.S. Patent No. 6,209,159 B1 to Murphy and U.S. Patent No. 6,113,188 to Stewart et al.

Vanzant disclose an air lifted seat apparatus that is basically the same as that recited in claims 1-3 and 6-8 except that the apparatus lacks a cover, a compartment, a rechargeable self-contained air compressor, and a second valve, as recited in the claims. See Figures 1-12 of Vanzant for the teaching that the apparatus has a rigid base 210, one-piece inflatable bladder 1,2 including a rectangular front portion, a rectangular rear portion with a height appearing at least three times the height of the front portion upon full inflation, and first and second trapezoidal shaped side panels operatively connected to the front and rear portions, a valve 18 operatively connected to one of the first and second side panels, an air compressor 14, and a hose 16 with a first

end connected to the compressor and a second end connected to the valve wherein the front portion rises in unison with the rear portion.

Murphy shows a seat similar to that of Vanzant wherein the seat has a rigid base 22, a bladder 98, and a cover 180,186 positioned over the bladder and operatively connected to the base. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat of Vanzant to include a cover positioned over the bladder and operatively connected to the base, such as the seat disclosed by Murphy. One would have been motivated to make such a modification in view of the suggestion in Murphy that the cover over the bladder is soft and comfortable surface for the user to sit on and is water resistant.

Stewart et al. show an air lifted seat apparatus similar to that of Vanzant wherein the apparatus has a rigid base 12, an inflatable bladder 16, a compartment (exterior of compressor 18 and battery 19) located near a side panel of the bladder and connected to the base, a rechargeable self-contained air compressor 18 connected to the base, and a valve 32 devoted to deflation. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Vanzant to include a compartment located at one of the side panels of the bladder and operatively connected to the base, the air compressor is rechargeable, self-contained, and positioned in the compartment, a cover positioned over the bladder and operatively connected to the base, and a second valve for deflation and operatively connected to a side panel, such as the apparatus disclosed by Stewart et al. One would have been motivated to make such a modification in view of the suggestion in

Stewart et al. that the rechargeable compressor-compartment configuration provides a compact air compressor that can be housed within an enclosed space yet be easily rechargeable.

With respect to claims 3 and 8, modifying the height of the rear portion to be approximately 7 inches higher than the front portion at full inflation would have been obvious at the time of Applicant's inventions because the use of optimal or workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the height of the rear portion of the bladder since Applicant has not disclosed that having the specific height range solves any stated problem or is for any particular purpose, and it appears that the bladder would perform equally well with any well known height range used in the seat art.

Claims 4, 5, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanzant in view of Murphy and Stewart et al. as applied to claims 1-3 and 6-8 above, and further in view of U.S. Patent No. 6,264,279 B1 to Chow.

Vanzant, as modified, discloses a seat apparatus that is basically the same as that recited in claims 4, 5, 9, and 10 except that the cover lacks a connecting means, as recited in the claims. Chow shows a seat apparatus similar to that of Vanzant wherein a cover 268 (Fig. 14a) has a removable connecting means and contains material to minimize slippage. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat apparatus of Vanzant such that the cover has a removable connecting means and contains material

to minimize slippage, such as the seat apparatus disclosed in Chow. One would have been motivated to make such a modification in view of the suggestion in Chow that the removable cover protects from debris and is water resistant.

Claims 4 and 9 use "selectively removable connecting means," which fails to invoke 35 U.S.C. 112, sixth paragraph, because it does not meet the three prong analysis set forth in MPEP § 2181.

Claims 1-3 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,629,162 to Porche in view of Murphy and Stewart et al.

Porche disclose an air lifted seat apparatus that is basically the same as that recited in claims 1-3 and 6-8 except that the apparatus lacks a rigid base, a cover, a rear portion at least three times the height of the front portion, a compartment, a rechargeable self-contained air compressor, and a second valve, as recited in the claims. See Figures 1-3 of Porche for the teaching that the apparatus has a one-piece inflatable bladder 10 including a rectangular front portion, a rectangular rear portion with a height appearing twice the height of the front portion upon full inflation, and first and second trapezoidal shaped side panels operatively connected to the front and rear portions, a valve 24 operatively connected to one of the first and second side panels, an air compressor 12, and a hose 14 with a first end connected to the compressor and a second end connected to the valve wherein the front portion rises in unison with the rear portion.

Murphy shows a seat similar to that of Porche wherein the seat has a rigid base 22, a bladder 98 positioned on the base, and a cover 180,186 positioned over the

bladder and operatively connected to the base. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seat of Porche to include a rigid base positioned under the bladder, a cover positioned over the bladder and operatively connected to the base, such as the seat disclosed by Murphy. One would have been motivated to make such a modification in view of the suggestion in Murphy that the cover over the bladder and base provides soft and comfortable surface for the user to sit on and is water resistant.

Stewart et al. show an air lifted seat apparatus similar to that of Porche wherein the apparatus has a rigid base 12, an inflatable bladder 16, a compartment (exterior of compressor 18 and battery 19) located near a side panel of the bladder and connected to the base, a rechargeable self-contained air compressor 18 connected to the base, and a valve 32 devoted to deflation such that the lifting portion of the seat has a rear portion appearing three times the height of a front portion upon full inflation. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the apparatus of Porche to include a compartment located at one of the side panels of the bladder and operatively connected to the base, the air compressor is rechargeable, self-contained, and positioned in the compartment, a cover positioned over the bladder and operatively connected to the base, and a second valve for deflation and operatively connected to a side panel wherein the bladder's rear portion on full inflation is at least three times the height of the front portion, such as the apparatus disclosed by Stewart et al. One would have been motivated to make such a modification in view of the suggestion in Stewart et al. that

the rechargeable compressor-compartment configuration provides a compact air compressor that can be housed within an enclosed space yet be easily rechargeable and angled to ensure the user is lifted to a standing position.

With respect to claims 3 and 8, modifying the height of the rear portion to be approximately 7 inches higher than the front portion at full inflation would have been obvious at the time of Applicant's inventions because the use of optimal or workable ranges discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the height of the rear portion of the bladder since Applicant has not disclosed that having the specific height range solves any stated problem or is for any particular purpose, and it appears that the bladder would perform equally well with any well known height range used in the seat art.

Claims 4, 5, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Porche in view of Murphy and Stewart et al. as applied to claims 1-3 and 6-8 above, and further in view of Chow.

Porche, as modified, discloses a seat apparatus that is basically the same as that recited in claims 4, 5, 9, and 10 except that the cover lacks a connecting means, as recited in the claims. Chow shows a seat apparatus similar to that of Porche wherein a cover 268 (Fig. 14a) has a removable connecting means and contains material to minimize slippage. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to further modify the seat apparatus of Porche such that the cover has a removable connecting means and contains material to

minimize slippage, such as the seat apparatus disclosed in Chow. One would have been motivated to make such a modification in view of the suggestion in Chow that the removable cover protects from debris and is water resistant.

***Response to Arguments***

Applicant's arguments, see page 13 of Appeal Brief, filed 12 October 2009, with respect to the rejection(s) of claim(s) 1 and 6 under Vanzant ('433) in view of Stewart et al. have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Vanzant, Stewart et al., Murphy, and Porche.

***Conclusion***

. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Joseph F Edell/  
Primary Examiner, Art Unit 3636  
January 4, 2010

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/DAVID DUNN/  
Supervisory Patent Examiner, Art Unit 3636.